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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/519,314	GUZMANN ET AL.	
	Examiner	Art Unit	
	Lorna M. Douyon	1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 June 2010*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *3-8,10-15 and 19-42* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *3-8,10-15 and 19-42* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application.
6) ☐ Other: _____.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 1, 2010 has been entered.

2. Claims 3-8, 10-15, 19-42 are pending. Claims 1-2, 9, 16-18 are cancelled. Claims 3, 4, 8, 10, 12-15, 19, 31-35, 37 are currently amended.

3. The rejection of claims 1-2, 8, 10-15, 19-23, 26, 28-32 and 34 under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Foley et al. (WO 00/63342), hereinafter "Foley" is withdrawn in view of Applicants' amendment.

4. The rejection of claims 35, 36, 37 and 38 under 35 U.S.C. 103(a) as being unpatentable over Foley as applied to the above claims is withdrawn in view of Applicants' amendment.

5. The rejection of claims 1-2 under 35 U.S.C. 103(a) as being unpatentable over Broeckx (WO 00/47707) is withdrawn in view of Applicants' cancellation of these claims.

6. The rejection of claims 1, 3-8, 10-15, 19-32, 34-36, 39-42 under 35 U.S.C. 103(a) as being unpatentable over Corring et al. (US Patent No. 5,141,664) is withdrawn in view of Applicants' amendment.

Double Patenting

7. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

8. Claims 37-38 and 39-40 are objected to under 37 CFR 1.75 as being a substantial **duplicates** of claims 35 and 36, respectively. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Objections

9. Claim 7 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The limitation of claim 7 is already recited in amended claim 3.

10. Claim 34 is objected to because of the following informalities: in line 1, "laundry" should be replaced with "laundering". Appropriate correction is required.

Claim Rejections - 35 USC § 112

11. Claims 29-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 29 depends from cancelled claim 1.

Claim 30 which depends from claim 29 inherits the same deficiency.

Claim Rejections - 35 USC § 103

12. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

13. Claims 3-8, 10-15, 19-22, 29-32, 34-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Broeckx (WO 00/47707) .

Broeckx teaches laundry detergent products such as heavy duty aqueous or gelled liquid laundry detergents which include one or more low density particles (which read on the secondary particles) and one or more particulate solids (which read on the primary particles), such as enzymes, bleaching agents, builders, chelants, alkalinity sources and surfactants (see abstract). The low density particles include water soluble or water insoluble organic or inorganic materials, microspheres (liquid hydrocarbon-containing and/or gas-containing , and/or hollow) that result in a reduction of the tendency of the particulate solids within a laundry detergent composition to sediment and/or settle out of the laundry detergent composition (see page 6, lines 17-27; page 7, lines 10-17). These low density particles are construed to be at least partially reflective as required in claim 6. The particulate solids have a particle size from 1-2000 microns (see page 6, lines 28-30), which may be encapsulated (see page 9, lines 14-15). The ratio of the average particle size diameter of the low density filler particles to the average particle size diameter of the dispersed particulate solids is preferably less than 6:1, more preferably less than 5:l, even more preferably less than 4:1, still even mare preferably less than 3:1, yet even more preferably less than 2:1, most preferably about 1:1 (see page 2, lines 24-28; page 7, lines 1-8). Liquid laundry compositions can be in concentrated form and the water content is preferably less than 40%, more preferably less than 30% (see page 11, lines 17-22), and the density of the laundry detergent composition ranges from 400 to 1200 g/litre (see page 11, lines 5-6). The density

difference between the density of a laundry detergent composition and the density of a particulate solid is less than about 0.2 g/ml (see page 10, lines 3-6). The heavy duty gel laundry detergent composition comprises, by weight of the composition: (a) from about 15% to about 40% of an anionic surfactant; and (b) one or more of ingredients like detersive amine, suitable electrolytes; and may further contain one or more additional detersive additives like non-citrate builders, polymeric dispersing agents (see page 28, lines 14-30), dyes, colorants and mixtures thereof (see page 29, lines 1-2), enzymes and enzyme stabilizing agents (see page 8, lines 28-30). The composition has a viscosity at 20 s^{-1} shear rate of from about 100 cp to about 4,000 cp (see page 29, lines 3-5), and is clear or translucent, i.e. not opaque (see page 29, line 20). Suitable dispersing agent (which reads on thickening agent) includes polycarboxylates derived from acrylic acid (see page 94, lines 1-14). The gel laundry detergent composition also comprises from 0 to about 10% electrolyte (see page 29, lines 21-27). The compositions will typically comprise at least about 1% builder, preferably from about 10% to about 80% (see page 90, lines 8-13), for example, alkali metal salts of polyphosphates and sulphates (see page 90, lines 21-26), which are salts. Broeckx, however, fails to disclose (1) a water content of from about 20 to 65% by weight, 20-50% or 35-50% by weight, (2) a non-aqueous component comprising a salt content of at least 70%, (3) the interaction of the radiation emitted by the gel and colored particles and solids forming a third or fourth color, the transmittance of the composition and migration speed of the particles/solids in the gelled composition, and (4) the secondary particles having a particle size of less than 50 µm.

With respect to difference (1), (2), and (4), it would have been obvious to one of ordinary skill in the art at the time the invention was made to optimize the proportions of water and builder, and particle sizes of the low density fillers through routine experimentation for best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the prima *facie* case of obviousness. See *In re Boesch, 617* F.2d 272,276,205 USPQ 215,219 (CCPA 1980). See also *In re Woodruff,* 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. *Cir.* 1990), and *In re Aller,* 220 F2d 454,456,105 USPQ 233,235 (CCPA 1955). In addition, a *prima facie* case of obviousness exists because the claimed ranges "overlap or lie inside ranges disclosed by the prior art", see *In re Wertheim,* 541 F.2d 257,191 USPQ 90 (CCPA 1976; *In re Woodruff;* 919 F.2d 1575,16USPQ2d 1934 (Fed. Cir. 1990). See MFEP 2131.03 and MPEP 2144.05I.

With respect to difference (3), even though Broeckx does not explicitly disclose the interaction of the radiation emitted by the gel and colored particles and solids forming a third or fourth color, the transmittance of the composition and migration speed of the particles/solids in the gelled composition it would have been nonetheless obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the gelled composition of Broeckx to exhibit similar, if not the same, characteristics as those recited because similar ingredients have been utilized.

14. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Broeckx as applied to the above claims, and further in view of Fonsny (US 4,846,992).

Broeckx teaches the features as described above. Broeckx, however, fails to disclose the composition in a pouch of polyvinylalcohol.

Fonsny teaches a similar composition which is gel-like (see abstract and col. 15, lines 15-20) and which is packaged in pre-measured dosage forms for single use in pouches formed from water soluble materials such as polyvinyl alcohol (see col. 16, lines 3-10).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to package the composition of Broeckx in a pouch made from polyvinyl alcohol because it is known from Fonsny that a similar composition can be packaged in pre-measured dosage forms in pouches formed from water soluble materials such as polyvinyl alcohol for ease in dispensing.

15. Claims 23-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Broeckx as applied to the above claims, and further in view of Onouchi et al. (US Patent No. 4,898,781), hereinafter "Onouchi".

Broeckx teaches the features as described above. Broeckx, however, fails to disclose an encapsulating agent for the active particle which contains plasticizer like polyglycol, which encapsulating agent is polyvinyl alcohol and which is also present in the core, and the amount of the encapsulating agent based on the weight of the particle as those recited.

Onouchi, an analogous art, teaches water-soluble microcapsules which are insoluble in a concentrated aqueous solution such as a liquid detergent and are retained stable therein (see col. 2, lines 14-17). The water-soluble microcapsules comprises water-containing hydrophilic substance as a core material and at least one polyvinyl alcohol selected from the group consisting of polyvinyl alcohol and modified polyvinyl alcohols as a coating material (see col. 2, lines 22-27). Typical examples of the hydrophilic substance include proteins (including enzymes), surfactants, and perfumes (see col. 3, lines 52-62). Since enzymes are generally in a powdery form, they are not independently encapsulated but are preferably coated in a form dissolved or dispersed in a water-containing polyhydroxy compound (see col. 4, lines 1-4), for example, ethylene glycol, propylene glycol, glycerin, polyethylene glycol, and low molecular weight polyvinyl alcohol (see col. 4, lines 30-52). In the encapsulation of an enzyme such as protease, for example, this enzyme and optionally a stabilizer such as a calcium salt are dissolved, in conjunction with the polyvinyl alcohol, in a mixture of a polyhydroxy compound such as propylene glycol with water (see col. 5, lines 59-63). The polyvinyl alcohol content of the aqueous solution is in the range of 3 to 17% by weight (see col. 5, lines 56-58).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have encapsulated the particulate solids like enzymes of Broeckx in the manner as taught by Onouchi because this would stably retain the water-soluble microcapsules in the liquid detergent.

16. Claims 3-8, 10-15, 19-32, 34-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Corring et al. (US Patent No. 5,141,664), hereinafter "Corring" as evidenced by Choy et al. (US Patent No. 4,695,394), hereinafter "Choy".

Corring teaches a clear gel with opaque particles of an active material uniformly dispersed and suspended within the gel, wherein the active material is surrounded by a protective substance such as an encapsulating layer, and representative of active materials are chlorine and oxygen bleaches, bleach precursors, enzymes, fabric softeners, surfactants, perfumes and mixtures of these materials (see abstract). The cleaning composition, which is useful for the cleaning of hard surfaces (see col. 1, lines 8-11), comprises (i) a clear gel comprising from 5% to 99.95% water and from 0.05% to 95% of a surfactant; and (ii) opaque particles of an active material uniformly dispersed and suspended within said gel (see col. 2, lines 35-45), wherein the opaque particles read on the primary particles of the instant claims. The composition should possess a viscosity of from about 1,000 to 20,000 cps at 25°C as measured in a Haake Rotovisco RV-100 Viscometer under a shear rate of 5 sec^{-1} (storage conditions), preferably from about 1,500 to 10,000 cps, optimally between 3,000 and 7,000 cps (see col. 2, lines 56-62). Water will generally be present in an amount ranging from about 25% to 80%, preferably from about 45 to 75%, optimally from about 55 to 65% by weight of the composition (see col. 5, lines 39-42). Normally, the gel comprises a polymeric thickener, for example, crosslinked polymers based upon allyl sucrose modified polyacrylic acid, like Carbopol 941© (see col. 5, line 50 to col. 6, line 12). In conjunction with the polymer thickener, there may be present a co-structurant such as a trivalent metal containing

material, for example alumina or hectorite clay (see col. 6, lines 17-35), which read on the secondary particles of the instant claims, and which inherently possess their natural color, and which are construed to be at least partially reflective. A third co-structurant may also be desirable for use in conjunction with the polymeric thickener and trivalent metal containing material, namely a water-soluble structuring chelant, for example, carbonates, pyrophosphates and mixtures of these two salts, wherein the amount of the chelant may range anywhere from about 1% up to about 60% by weight of the composition (see col. 6, lines 36-53). Within the context of this invention, the composition is deemed to be clear if the maximum transmittance of light through a sample 2 cm thick is at least 10%, and distinguishes the clear gel with one that is translucent or opaque (see col. 6, last line to col. 7, line 12). Preferably, the opaque particles have particle sizes which range from about 100 microns up to about 3,000 microns average size, preferably from about 500 to about 2,000 microns, optimally between about 850 and 1,500 microns (see col. 7, lines 17-23). The protective substance surrounding the active particles include inorganic salts (which are water-soluble), soaps, homo and copolymers, polyalkoxylates, polyglycolates, organic amides and mixtures thereof (see col. 7, lines 39-50). Inorganic salts may also serve as a diluent protective substance intimately mixed or agglomerated with the active material to form a matrix, the total matrix being covered by a soap, homopolymer, or other organic surface coating (see col. 7, lines 54-59). An example of a homopolymer is polyvinyl alcohol (see col. 7, lines 60-64). Enzymes mat be used as the active material and may be deposited or entrapped upon a supporting substrate such as an inorganic salt,

aluminosilicate, organic polymer or other non-interactive solid base material (see col. 9, lines 23-31), which supporting substrate reads on the stabilizing aid fro the enzyme. In Example 1, Corring teaches a cleaning composition used for automatic dishwashing which comprises a clear gel base formulation comprising 19.0 wt% tetrapotassium pyrophosphate, 7.5 wt% sodium silicate, 6.0 wt% potassium carbonate, 1.0 wt% sodium tripolyphosphate, 1.0 wt% potassium hydroxide, 1.0 wt% Carbopol 941, 0.1 wt% alumina (which is known to have a particle size below 50 μm), balance water (see col. 9, line 55 to col. 10, line 9), and to which is added 7.0 wt% encapsulated bleach particles (see col. 10, lines 55-58). By calculation, the percentage of total salt , i.e., tetrapotassium pyrophosphate, sodium silicate, potassium carbonate and sodium tripolyphosphate: (19.0 + 7.5 + 6.0 + 1.0) x 0.93 / 40.1 (total nonaqueous) x 100) is 77.7% (which meets the required "nonaqueous component comprising a salt content of at least 70% salt"; the non-aqueous component being construed as all the other ingredients of the composition other than water). Efficient cleaning of dishes and glassware is seen with the use of the encapsulated bleach particles (see col. 10, line 10 to col. 11, line 25). Minor amounts of various other adjuvants may be present in the gel composition with the proviso that these adjuvants not interfere with clarity, and the adjuvants include perfumes and other functional additives (see col. 6, lines 54-60). It is known that dyes are common components in liquid automatic dishwashing detergent compositions (see col. 1, lines 56-62). Corring, however, fails to disclose the clear gel having a first color, the encapsulated particles having a second color, and the alumina

or hectorite clay particles having particle sizes as those recited (i.e., less than 50 μm), such that the composition has another color as required by the instant claims.

It is known from Choy that alumina has a particle size of no more than about one micron (see abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the alumina of Corring to have a particle size within those recited because, as evidenced by Choy, alumina has a particle size of no more than about one micron.

It would also have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated dyes into the clear gel, as well as to the encapsulated particles because this would provide a pleasing aesthetic characteristic on the final product. Even assuming that the prior art's resulting composition has only one color, please note that the present claim's final color, after all the colors of the gel, primary particles and secondary particles interacted together also forms a final color, therefore, the prior colors of the gel, primary particles and secondary particles are not given patentable weight because these are viewed as product-by-process claims. The final color of the resulting composition of the present claims, after the gel, primary particles and secondary particles have interacted when mixed together, is what is visible to the naked eye, regardless of whether or not the starting materials have different colors prior to mixing, because the present claims are product claims, not process of making, such that the prior state of the starting materials is not given patentable weight.

17. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Foley, **or** Corring as evidenced by Choy, as applied to the above claims, and further in view of Fonsny (US 4,846,992).

Foley, or Corring as evidenced by Choy teaches the features as described above. Foley, or Corring as evidenced by Choy, however, fails to disclose the composition in a pouch of polyvinylalcohol.

Fonsny teaches a similar composition which is gel-like (see abstract and col. 15, lines 15-20) and which is packaged in pre-measured dosage forms for single use in pouches formed from water soluble materials such as polyvinyl alcohol (see col. 16, lines 3-10).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to package the composition of Foley **or** Corring as evidenced by Choy in a pouch made from polyvinyl alcohol because it is known from Fonsny that a similar composition can be packaged in pre-measured dosage forms in pouches formed from water soluble materials such as polyvinyl alcohol for ease in dispensing.

Response to Arguments

18. Applicants' arguments filed on June 1, 2010 have been fully considered but they are not persuasive.

With respect to the obviousness rejection based upon Broeckx (WO 00/47707), and the obviousness rejection of claim 33 over Broeckx in view of Fonsny, Applicants argue that the differences between Broeckx and the present invention include (1) the

water content of the gel; (2) the salt content of the non-aqueous component; (3) the interaction of the radiation emitted by the gel and colored particles and solids forming a third color; (4) the transmittance of the composition and migration speed of the particles in the gelled composition; and (5) the particle size of the secondary particles. Applicants also argue that Applicants also argue that the Examiner has not provided any reasoning as to why a skilled artisan would have modified Broeckx to "optimize" the salt and water content. Applicants also argue that there are just too many modifications that a skilled artisan would need to undertake in order to achieve the present invention after reading Broeckx to be considered obvious.

The Examiner respectfully disagrees with the above argument because, as stated in the previous office action and which is repeated in paragraph 13 above, Broeckx teaches that liquid laundry compositions, in concentrated form, have a water content of preferably less than 40%, more preferably less than 30% (see page 11, lines 17-22), which overlaps the recited range of "about 20 to 65% by weight", the overlap being in the range of "about 20 to less than 40%". Broeckx also teaches: a heavy duty gel laundry detergent composition which comprises, by weight of the composition: (a) from about 15% to about 40% of an anionic surfactant; and (b) one or more of ingredients like detersive amine, suitable electrolytes; and may further contain one or more additional detersive additives like non-citrate builders, polymeric dispersing agents (see page 28, lines 14-30), dyes, colorants and mixtures thereof (see page 29, lines 1-2), enzymes and enzyme stabilizing agents (see page 8, lines 28-30), the composition having a viscosity at 20 s^{-1} shear rate of from about 100 cp to about 4,000 cp (see page

29, lines 3-5), and is clear or translucent, i.e. not opaque (see page 29, line 20). Suitable dispersing agent (which reads on thickening agent) includes polycarboxylates derived from acrylic acid (see page 94, lines 1-14). The gel laundry detergent composition also comprises from 0 to about 10% electrolyte (see page 29, lines 21-27). The compositions will typically comprise at least about 1% builder, preferably from about 10% to about 80% (see page 90, lines 8-13), for example, alkali metal salts of polyphosphates and sulphates (see page 90, lines 21-26), which are salts. With this teaching there is also seen an overlap in the salt content, the overlap being in the range of "at least 70% to about 80%".

In the case where the claimed ranges "overlap or lie inside ranges disclosed by the prior art" a *prima facie* case of obviousness exists. *In re Wertheim,* 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed. Cir. 1990). In addition, "a prior art reference that discloses a range encompassing a somewhat narrower claimed range is sufficient to establish a prima facie case of obviousness." *In re Peterson,* 315 F.3d 1325, 1330, 65 USPQ2d 1379, 1382-83 (Fed. Cir. 2003). See also *In re Harris,* 409 F.3d 1339, 74 USPQ2d 1951 (Fed. Cir. 2005). See also MPEP 2144. 05 I.

Even though Broeckx does not explicitly disclose the interaction of the radiation emitted by the gel and colored particles and solids forming a third or fourth color, the transmittance of the composition and migration speed of the particles/solids in the gelled composition, as stated in the previous office action, it would have been nonetheless obvious to one of ordinary skill in the art at the time the invention was

made to reasonably expect the gelled composition of Broeckx to exhibit similar, if not the same, characteristics as those recited because similar ingredients have been utilized. On page 6, lines 17-27 and page 7, lines 10-17, Broeckx teaches that the low density particles include water soluble or water insoluble organic or inorganic materials, microspheres (liquid hydrocarbon-containing and/or gas-containing , and/or hollow) that result in a reduction of the tendency of the particulate solids within a laundry detergent composition to sediment and/or settle out of the laundry detergent composition. Hence, with this teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the migration speed of the particles to be within those recited.

With respect to the particle sizes of the secondary particles of Broeckx, which are the low density particles, Broeckx, on page 6, lines 28-30, teaches that the particulate solids (construed to read on the primary particles) have a particle size from 1-2000 microns. On page 2, lines 24-28 and page 7, lines 1-8, Broeckx also teaches that the ratio of the average particle size diameter of the low density filler particles to the average particle size diameter of the dispersed particulate solids is preferably less than 6:1, more preferably less than 5:l, even more preferably less than 4:1, still even mare preferably less than 3:1, yet even more preferably less than 2:1, most preferably about 1:1. Hence, with this teaching the particle sizes of the low density particles or secondary particles overlap those of the particulate solids or primary particles, and the overlap, for the secondary particles is in the range of "1 to less than 50 microns".

With respect to the obviousness rejection based upon Corring, Applicants argue that there is no reason why a skilled artisan would have modified Corring, and any suggestion to do so is clearly based on an impermissible hindsight reconstruction of the presently claimed invention.

Please note that the present obviousness rejection is now based upon Corring as evidenced by Choy. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). As stated in paragraph 16 above, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated dyes into the clear gel, as well as to the encapsulated particles and the alumina or silica because this would provide a pleasing aesthetic characteristic on the final product. Even assuming that the prior art's resulting composition has only one color, please note that the present claim's final color, after all the colors of the gel, primary particles and secondary particles interacted together also forms a final color, therefore, the prior colors of the gel, primary particles and secondary particles are not given patentable weight because these are viewed as product-by-process claims. The final color of the resulting composition of the present claims, after the gel, primary particles and secondary

particles have interacted when mixed together, is what is visible to the naked eye, regardless of whether or not the starting materials have different colors prior to mixing, because the present claims are product claims, not process of making, such that the prior state of the starting materials is not given patentable weight.

Conclusion

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to 3 whose telephone number is 571-272-1313. The examiner can normally be reached on Mondays-Fridays 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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